

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 3/31/09
FILE NO. HB374

Lisa and Allan Kirk
227 E. Olive Street
Bozeman MT 59715

31 March 2009

Chairman Gary Perry
Esteemed Members of the Senate Judiciary Committee
Montana State House
Helena MT

Re: House Bill 574 – Revise Burglary Statute

Dear Chairman Perry and Members of the Committee:

We have prepared this testimony regarding the need to amend the existing Montana burglary statute. Thank you for the opportunity to present our opinion to the committee. We believe change is needed to clarify the definition of burglary in situations where it is difficult to discern the intent of an individual who has entered an occupied dwelling without permission and commits a crime therein. The current statute seems to require law enforcement officers to discern the intent of such an individual, who may not even know his or her own intent due to intoxication, thereby limiting their ability to appropriately charge such individuals and vastly complicating the job of prosecutors who address this type of crime. Because crimes committed under these circumstances are growing more commonplace in Montana and can have very serious consequences, the proposed amendment is necessary to allow adequate supervision, treatment, and control of offenders.

On Saturday morning, 11/08/08, our 17 year old daughter Molly Kirk awoke at 5:30 a.m. to find a man, previously unknown to us, seated in her bed. He was stroking her legs and back in a sexually suggestive manner, after having pushed her over to make room for him in the bed. He entered our home without permission through an unlocked but closed door, after having removed his shoes to allow him to move quietly through our home while we were sleeping. There was no one awake when he entered, sometime after 2 a.m. We don't know how long he was in our home before Molly awoke, but given the layout of our home he must have wandered throughout the house and opened several doors in order to obtain access to her bedroom. When she recognized his level of intoxication and his physical size and proximity to her, she was afraid to scream for help. Instead, she bravely confronted him as a stranger, asked how he got into our home, and instructed him to leave. Throughout this, he behaved as though he was very comfortable being in her room and satisfied with her level of distress. As he was leaving, he actually provided his name and phone number to her upon request. He was arrested immediately thereafter on misdemeanor charges of criminal trespass and sexual assault and released on \$995 bond. He has since pleaded not guilty to both charges, in spite of having admitted his presence in our home to police and provided his contact information to Molly. It is our understanding that this was the man's second arrest for criminal trespass in Bozeman this year, and that he was released without serving time in jail or being supervised under probation after paying a fine when he was found guilty of an initial criminal act.

We do not know if this individual had seen Molly prior to this event, on the internet or in public places within our community, and therefore cannot be certain whether this was a random episode of trespass and assault or a more intentional, predatory act. To protect our child from further insult and injury, we have been forced to

attain an order of protection against the individual. We have provided our daughter with counseling to address the traumatic stress of sexual assault. We have taken many hours off from our work to participate in the legal and judicial process, with significant loss of work time.

The sanctity of our home was violated by this stranger and our child was traumatized by sexual assault, but the responsible individual has only been charged with a misdemeanor crime which carries minimal penalties. We are afraid and feel that we cannot protect our children in our own home. Our daughter has nightmares about being attacked by this person and will never again feel entirely safe in her home. The potential significance of such assault for the normal emotional development of a teenage girl cannot be overstated, and we are heartbroken that she has had to experience this assault at all. Our situation was not a case where an intoxicated person fell asleep on the sofa in the wrong house, which happens surprisingly often in downtown Bozeman, or a situation where someone touched a co-worker inappropriately in the workplace. One can understand enforcement under misdemeanor statutes in such cases, but the much greater emotional violation of combined trespass and assault (particularly at night, when we are asleep and therefore most vulnerable) requires the more substantial consequence of felony penalty. We believe that this individual entered our home with criminal intent and remained without our permission until he sexually assaulted our daughter in her own bed. If he did not intend to commit crime at the time of illegal entry, what lawful purpose did he intend? In fact, he admitted his repeated crime of trespass to police and also committed the crime of sexual assault. For these reasons, we believe that he is guilty of felony crime, not misdemeanor crime, but existing statute does not meet this need. Unfortunately, members of law enforcement who investigated this case tell us that Montana statute requires that the court prove his intent in order to convict him of felony burglary, a difficult proposition at best when such a severely intoxicated individual is involved. Law enforcement officers involved in this case stated repeatedly that the need to establish intent made it too difficult for them to prosecute this individual under the felony burglary statute, which carries substantially higher penalties and would allow greater supervision by the court. Uncertainty about this individual's intent led prosecutors not to charge him with felony crime. We recognize that neither the misdemeanor criminal trespass nor the sexual assault statutes provide for the individual who violated our home and our child to be listed as a sexual predator, which though appropriate cannot be accomplished until an actual rape occurs. An ability to sentence this individual for felony burglary without establishing intent, as provided under HB 574, would provide the needed supervision and legal leverage necessary to ensure adequate treatment and control.

As owners of a home in a residential area adjacent to downtown Bozeman, we have observed escalating patterns of drunken criminal behavior that has damaged our property and now threatens the very safety of our home. Police tell us that random episodes of criminal trespass occur weekly throughout the downtown area as a result of public drunkenness, in a tone that seems to suggest that such behavior is something that those of us living downtown should learn to accept. While they are sympathetic to our position that such a reality is unacceptable, they are reportedly too understaffed to adequately police the downtown neighborhoods when the bars close because they are too busy handling domestic and public disputes. We ask the legislature to demonstrate strong public opposition to this unwarranted and unacceptable assault on private property and the peace of our community by making such entry, when it involves provable crime, a felony with appropriately stronger sentencing provisions.

Sincerely,



Mr. and Mrs. Allan R. Kirk